IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12550 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMC - Petitioner(s)
Versus
SOCIAL COOP BANK LTD & 1 - Respondent(s)

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Appearance :
MR PRASHANT G DESAI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 29/03/2006

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India, the petitioner, Ahmedabad Municipal Corporation has challenged the legality and validity of the order 25.2.1994 passed

by the Chief Judge of Ahmedabad Small Causes Court No.1 in Compensation Appeal No. 1991 of 1985 by which the learned Trial Court has directed the petitioner Municipal Corporation to pay an amount of Rs. 1,74,000 on account of compensation of the acquired land as well as to pay an amount of Rs. 52,200 on account of solatium and to pay interest at the rate of 9% p.a., on the amount of Rs. 2,26,200 for the first year from 20th April 1982 to 20th April 1983 and at the rate of 15% p.a., on Rs. 2,26,200 from 20th April 1983 until petitioner deposits the aforesaid amount in the Court or pays the same directly to the respondent Bank herein.

2. The short but interesting question which arises in the present Special Civil Application is, when the portion of the land is kept for road widening under Section 210 and 212 of the Bombay Provincial Municipal Corporations Act [“BPMC Act” for short] and when the land is acquired after paying compensation under Section 389 of the BPMC Act, whether interest and solatium, as provided under the

provisions of the Land Acquisition Act, are required to be paid or not ? The respondent Bank was the owner of land/property situate on Survey No. 6132/B(G)/2 of Jamalpur Ward No.1 on Astodia Road, near Khamasa Gate, Ahmedabad, and the entire survey number with the superstructure thereon was admeasuring 351.20 sq.mtrs. It appears that the land admeasuring 57.98 sq.mtrs., was on a roadline and possession of the said piece of land was taken by the petitioner Corporation on 20th April 1982 exercising power under Section 210 read with Section 212 of the BPMC Act. The respondent Bank sought compensation under Section 211 of the BPMC Act; the Municipal Commissioner declared the award under Section 390 of the BPMC Act on 20th February 1985; compensation was calculated at Rs. 40,586; and after deducting an amount of Rs. 6,120 on account of betterment charges the respondent Bank was awarded net compensation of Rs. 34,466. It appears that, being aggrieved and dissatisfied with the aforesaid award the respondent Bank preferred Compensation Appeal No. 1991 of 1985 before the Small Causes Court, Court No.1, Ahmedabad,

and after appreciation of the evidence on record the learned trial Court held that the amount awarded by the Municipal Commissioner is inadequate and that the respondent Bank is entitled to amount of Rs. 1,74,000 on account of compensation of acquired land. The Trial Court not only directed the petitioner Corporation to pay the amount of Rs. 1,74,000 on account of compensation of the acquired land but also directed to pay an amount of Rs. 52,200 on account of solatium and interest at the rate of 9% on Rs. 2,26,200 for the first year from 20th April 1982 to 20th April 1983, and at the rate of 15% p.a. at Rs. 2,26,200 from 20th April 1983 until the aforesaid amount is paid as if the land in question is acquired under the provisions of the Land Acquisition Act and/or while making payment of compensation the provisions of Land Acquisition Act are applicable. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the learned Trial Court dated 25.2.1994 in Compensation Appeal No. 1991 of 1985, the petitioner Corporation has preferred the present Special Civil Application under Article

226/227 of the Constitution of India.

3. Shri Prashant G. Desai, learned advocate appearing on behalf of the petitioner, has vehemently submitted that the learned Trial Court has materially erred in directing the petitioner to pay solatium as well as interest at the rate of 9% p.a., for the first year and at the rate of 15% for the subsequent years as if the provisions of the Land Acquisition Act are applicable and the land in question is acquired under the provisions of the Land Acquisition Act. He has submitted that when the land in question is acquired for road widening under the provisions of Section 210 and 212 of the BPMC Act and the mode of payment of amount of compensation as required to be paid under Section 211, 389 and 390 of the BPMC Act is a complete code for compensation. While relying upon the judgment of the Hon'ble Supreme Court in the case of *The Municipal Corporation of the City of Ahmedabad and Others (In all the Appeals) vs. The State of Gujarat* and

another, etc., reported in *AIR 1972 S.C. Page 1730*, Shri Desai has submitted that as held by the Hon'ble Supreme Court, the provisions of Section 216 read with Section 389 of the BPMC Act are complete code for compensation and no provision of Land Acquisition Act can be made applicable, but powers are vested in the Commissioner to determine the compensation under Section 389(1)(f) of the Act, and declare an award under Section 389 of the BPMC Act; Section 216 of the BPMC Act is in line with Town Planning Act and only some of the land goes under acquisition for road widening; it might be possible that on taking away the land for road widening the position of the land might be changed to the advantage of the land-owner; and under the provisions of the BPMC Act even the Commissioner can also be paid the amount of compensation. It is further submitted by him that in fact now the controversy in question is already covered by the latest judgment of the Division Bench of this Court in the case of *Revaben, Wd/o. Chimanlal Gopaldas & Ors. Vs. State of Gujarat & Ors*., reported in *43(2) GLR 1530* where the Division Bench has held

that while making payment of compensation and declaring an award under Section 390 of the BPMC Act, claimants are not entitled to solatium and the provisions contained in Part-III of Appendix-I to the BPMC Act are not unconstitutional and/or ultra vires and are not violative of Article 14 of the Constitution of India. It is, therefore, requested to allow the present Special Civil Application.

4. Though initially, Shri Harin Raval, learned advocate appearing on behalf of the respondent Bank tried to support the judgment and order passed by the trial Court by which the solatium and interest are awarded while relying upon the judgment of this Court in the case of *Navinchandra M. Randeria and Others vs. State of Gujarat & Ors.*, reported in *1989(1) GLH 604,* however, subsequently on going through the judgment of the Division Bench of this Court in the case of *Revaben, Wd/o. Chimanlal Gopaldas & Ors.* (supra), Shri Raval has conceded that the controversy in question is already covered by the judgment of the Division Bench of this Court. He has, however,

submitted that when the amount of compensation is not paid to the petitioner, the respondent is entitled to some interest till the payment is made.

5. As stated above, the short question, which has arisen in the Special Civil Application is whether when the portion of the land is under road-widening under Section 210 and Section 212 of the BPMC Act, and award is declared by the Commissioner under Section 390 of the BPMC Act and compensation is paid under the said Act whether the claimant and/or the person whose land is acquired is entitled to interest and solatium or not. An identical question came to be considered by the Division Bench of this Court in the case of *Revaben, Wd/o. Chimanlal Gopaldas & Ors.* (supra), where the provisions contained in Part-III of Appendix-I to the BPMC Act were challenged as unconstitutional and ultra vires as there is no express provision with regard to grant of solatium in case of land acquired under BPMC Act where provision is so made under Section 23(2) of the Land Acquisition Act and whether any

discriminatory treatment is given to a landowner whose land is acquired under the BPMC Act or not, while dealing with that question after considering the judgments of the Hon'ble Supreme Court and the scheme of the BPMC Act more particularly the provisions relating to award of compensation under the BPMC Act, the Division Bench has held that the claimants are not entitled to solatium, and that the provisions contained in Part-III of Appendix-I to the BPMC Act are not unconstitutional and/or ultra vires and are not violative of Article 14 of the Constitution of India. Even otherwise, as held by the Hon'ble Supreme Court in the case of *The Municipal Corporation of the City of Ahmedabad and Others (supra),* Section 216 read with Section 389 of the BPMC Act are complete code for acquisition of land and compensation for road widening under the BPMC Act cannot be equated with the acquisition of land under the Land Acquisition Act. While acquiring the land under the BPMC Act for road widening, only small portion of the road might be required for acquisition and it might happen that because of that,

the position of the property might be changed to the advantage of the original-landowner, and under the BPMC Act on that count the amount of compensation may be reqired to be paid to the Municipal Corporation. Under the circumstances, while declaring the award under Section 390 of the BPMC Act, for the land acquired under the BPMC Act under Section 210 read with Section 212 for road-widening, the claimant is not entitled to solatium and interest as per provisions of the Land Acquisition Act as the provisions of the Land Acquisition Act would not be applicable at all and the award providing compensation if any should be made considering the scheme and provisions of the BPMC Act. Under the circumstances, the learned Trial Court has materially erred in awarding solatium and interest on the amount of compensation, i.e., Rs. 1,74,000 and therefore the same is required to be quashed and set aside. So far as determination of amount of compensation at Rs. 1,74,000 is concerned, Shri Desai, learned advocate appearing on behalf of the petitioner has failed to show any illegality and/or satisfy this Court as to

how the said determination is bad in law. Under the circumstances, the order passed by the learned Trial Court determining compensation at Rs. 1,74,000 is required to be confirmed and is hereby confirmed.

6. For the reasons stated above, the petition partly succeeds. The judgment and order passed by the learned Small Causes Court at Ahmedabad, dated 25.2.1994 in Compensation Appeal No. 1991/1985 is modified to the extent that the judgment and order passed by the learned Trial Court, directing the petitioner Corporation to pay the amount of Rs. 52,200 on account of solatium and also to pay interest at the rate of 9% p.a., on the amount of Rs. 2,26,000 for the first year from 20th April 1982 to 20th April 1983, and at the rate of 15% p.a., at Rs. 2,26,200 from 20th April 1983 until the petitioner Corporation deposits the aforesaid amount in the Court or pays the same directly to the respondent, is hereby quashed and set aside. The rest of the order, determining the compensation at the rate of Rs. 1,74,000 is hereby confirmed. It is submitted that

as such the respondent Bank was entitled to Rs. 1,74,000 minus Rs. 40,586 (if paid) in the year 1994 itself which is not paid to the petitioner and/or which is deposited by the petitioner with the Small Causes Court and therefore the respondent would at least be entitled to some interest from 1994 till actual payment of the aforesaid amount of compensation is paid. Under the circumstances, it is ordered that the petitioner Municipal Corporation shall pay the aforesaid amount of compensation, i.e., Rs. 1,74,000 minus Rs. 40,586 (if paid) with interest at the rate of 6% p.a. from 25.2.1994 till the aforesaid amount is paid. If the petitioner is not paid even the said amount of Rs. 40,586, meaning thereby if the petitioner is not paid a single penny towards compensation, an amount of Rs. 1,74,000 is required to be paid by way of compensation and in that case the respondent Bank would be entitled to interest at the rate of 6% on the entire amount of Rs. 1,74,000. If any amount is deposited by the petitioner with the Small Causes Court at Ahmedabad pursuant to the interim order passed by this Court,

it will be open for the petitioner to withdraw the same, and in case if the same is in form of Fixed Deposit, the petitioner Corporation is entitled to withdraw the same with interest accrued thereon. The aforesaid exercise be completed within 3 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.